

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

POWERVIBE, L.L.C.,	§	
	§	
Plaintiff,	§	
	§	
V.	§	CIVIL ACTION NO. 307-CV1536-K
	§	
PATRICK BARBARA,	§	
	§	
Defendant.	§	

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**AFFIDAVIT OF PATRICK BARBARA’S IN SUPPORT OF FIRST AMENDED  
MOTION TO DISMISS**

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STATE OF CALIFORNIA	§	
	§	
COUNTY OF LOS ANGELES	§	

BEFORE ME, the undersigned authority, on this day personally appeared Patrick Barbara, who, being by me duly sworn, deposed as follows:

“1. My name is Patrick Barbara. I am over the age of eighteen (18), of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated. I am a resident of the State of California.

“2. In February, 2006, I met with Christian Reichardt (hereinafter ‘Reichardt’) at a trade show in Las Vegas, Nevada. I was presenting Fitvibe Machines and conferred with Reichardt regarding a program for kids against steroids. I advised Reichardt that I was working on getting a home model that was being distributed in Europe. Reichardt and I discussed embarking on a new business venture together.

“3. Subsequently, Reichardt contacted me regarding a potential investor in the new business, to wit, Dan Kondos (hereinafter “Kondos”). Kondos, along with two other individuals, visited me in California for the purpose of viewing a demonstration of the subject equipment.

“4. In or about July, 2006, Reichardt and Kondos, along with myself, entered into an agreement in which we agreed that we would operate a business entity known as Powervibe for the purpose of selling certain specific models of vibration machines to be used for fitness purposes. We were each to own an equal 1/3<sup>rd</sup> interest in the new entity. I was to control the day to day operations of the business. Pursuant to the agreement, on or about July 31, 2006, Powervibe was formed and began to conduct business. Powervibe has three principal locations, all within the State of California.

“5. I acknowledge that Powervibe was formed as a Texas entity. However, I acquiesced to the formation of the business in Texas based upon the advice of Kondos, an attorney, who said he could use his connections to the legal community in Texas to assist with the paperwork, etc. I subsequently discovered that Kondos fraudulently induced me to enter into such a transaction, along with other transactions, which were in the best interest of Kondos but not in the best interest of Powervibe.

“6. Kondos is an attorney and I detrimentally relied upon his advice; had I known the true intent, I would not have agreed to Powervibe being formed as a Texas entity. Even though Powervibe is a Texas entity, the day-to-day operations of Powervibe are in California, not Texas. Powervibe has no offices in Texas. Further Powervibe has no employees in Texas. The main place of business of Powervibe is located at three locations in California. Powervibe does not actively market or sell its products to those in Texas. Further, all of the work in creating Powervibe as far as I am concerned was performed in California, including: the establishment of

a show room in Santa Monica, California; multiple meetings in this California showroom; the direction and filming of a training video in connection with Powervibe's business in this California showroom. I also participated in meetings related to Powervibe at Dan Kondos's place in California located at 1200 Ocean, Santa Monica, California.

"7. After the formation of the business entity, a dispute arose. A meeting took place in March, 2007 in California in which Kondos and Reichardt wrongfully removed me from my position of controlling the day to day operations of Powervibe. Since that time, I have made repeated demands for an opportunity to review the books and records of Powervibe, including, without limitation, its bank statements but Kondos/Reichardt have refused to cooperate.

"8. The principal residence of Reichardt is in California. Further, upon information and belief, Kondos has a residence in California where he spends a good portion of his time.

"9. I acknowledge that another entity was formed in Texas known as Leading Edge Marketing, L.L.C. (hereinafter "Leading Edge") which was formed in part to assist in marketing the product sold by Powervibe. Leading Edge is a completely separate entity from Powervibe. I opposed the formation of Leading Edge as the individuals connected with this entity were not qualified and had insufficient knowledge of the business. This entity was created solely for the best interest of Kondos and/or Reichardt in my opinion, and was created to the detriment of Powervibe.

"10. I do not purchase goods from Texas in connection with the Powervibe business, or send employees to Texas for training. I am not licensed or qualified to do business in Texas. I have no employees in Texas, have no offices in Texas, have no mailing addresses or telephone numbers in Texas. I do not own, use, or possess real or personal property in Texas, and do not manufacture goods in Texas. I have not purposefully delivered any products into the stream of

commerce in Texas, and have not personally advertised in Texas. I do not otherwise conduct business in Texas.”

FURTHER AFFIANT SAYETH NOT.

/s/Patrick Barbara  
PATRICK BARBARA

SUBSCRIBED AND SWORN to before me on this the 1<sup>st</sup> day of October, 2007, to which witness my hand and official seal.

/s/Edwin N. Paek  
NOTARY PUBIC, in and for the  
State of California

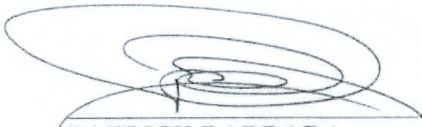
/s/Edwin Paek  
Printed Name

My Commission Expires: December 13, 2009

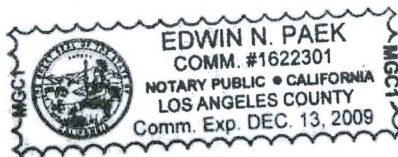
“Notary Seal”


commerce in Texas, and have not personally advertised in Texas. I do not otherwise conduct business in Texas.”

FURTHER AFFIANT SAYETH NOT.

  
PATRICK BARBARA

SUBSCRIBED AND SWORN to before me on this the 1st day of October 2007, to which witness my hand and official seal.



  
NOTARY PUBLIC, in and for the  
State of California

Edwin Paek  
Printed Name

My Commission Expires: 12/13/2009